



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE M.S.RAMESH

WEB COPY

Writ Petition (MD) No.12016 of 2018

Muthuvairam

... Petitioner

Vs.

1. The Passport Officer,
Regional Passport Office,
Madurai Region,
Madurai.

2. The Inspector of Police,
Sattur Town Police Station,
Virudhunagar District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the first respondent to issue a Passport without insisting to produce the No objection Certificate from the Police, within the stipulated period.

For Petitioner : Mr.M.Jothibasu

For 1st Respondent : Mr.C.Nandagopal

For 2nd Respondent : Mr.J.Gunaseelan Muthiah
Additional Government Pleader

ORDER

The petitioner's application No.MDUF 18348483347 which was taken on file by the first respondent herein in MD01C5019498318, dated 11.04.2018 is still pending. Hence the present writ petition has been filed.

2.This Court had an occasion to deal with the status of a person involved in a criminal offence for being considered for issuance of passport in W.P(MD)No.20335 of 2016, dated 19.04.2018. The relevant portion of the said order is as follows:

"8.Before dealing with the facts of the petitioner's case, it would be appropriate to have a glance at the legal position in a case of this nature. Section 10 (3) (e) of the Indian Passports Act, 1967 reads as follows:

<https://hcservices.ecourts.gov.in/hcservices/>

"10.Variation, impounding and revocation of passports and travel documents:-



(1).....

(2).....

(3) The passport authority may impound or cause to be impounded or revoke a passport or travel document,-

(a).....

(e) if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a Criminal Court in India."

9. The word 'may impound' empowering a passport authority to impound or cause to impound or revoke the passport is apparently directory in nature and not mandatory.

10. The Ministry of External Affairs by a notification in GSR 570 dated 25.08.1993 had diluted the scope of Section 10(3) (e) of the Indian Passports Act, 1967 by exempting the persons against whom criminal proceedings are pending and who produce orders from the Court thereby permitting them to depart from the country with certain conditions. For the sake of clarity, the said notification is extracted hereunder:-

"Ministry of External Affairs Notification
New Delhi, the 25th August, 1993

G.S.R.570 (E):-In exercise of the powers conferred by clause (1) of Section 22 of the Passports Act 1967 (15 of 1967) and in suppression of the notification of the Government of India in the Ministry of External Affairs No.G.S.R.298(E), dated 14th April 1976, the Central Government, being of the opinion that it is necessary in public interest to do so, hereby exempts citizens of India against whom proceedings in respect of an offence alleged to have been committed by them are pending before a criminal court in India and who produce orders from the court concerned permitting them to depart from India, from the operation of the provisions of Clause (f) of sub-section (2) of Section 6 of the said Act, subject to the following conditions, namely:-

(a) the passport to be issued to every such citizen shall be issued

(i) for the period specified in order of the court referred to above, if the court specifies a period for which the passport has to be issued; or

(ii) if no period either for the issue of the passport or for the travel abroad is specified in such order, the passport shall be issued for a period of one

(iii) if such order gives permission to travel abroad for a period less than one year, but does not



specify the period validity of the passport, the passport shall be issued for one year; or

(iv) if such order gives permission to travel abroad for a period exceeding one year, and does not specify the validity of the passport, then the passport shall be issued for the period of travel abroad specified in the order.

(b) any passport issued in terms of (a) (ii) and (a) (iii) above can be further renewed for one year at a time, provided the applicant has not travelled abroad for the period sanctioned by the Court; and provided further that, in the meantime, the order of the Court is not cancelled or modified;

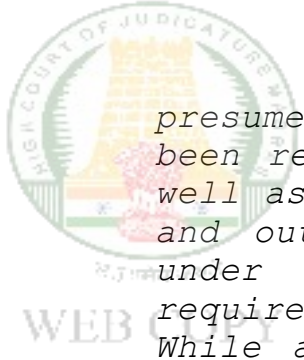
(c) any passport issued in terms of (a) (I) above can be further renewed only on the basis of a fresh court order specifying a further period of validity of the passport or specifying a period for travel abroad;

(d) the said citizen shall give an undertaking in writing to the passport issuing authority that he shall, if required by the court concerned, appear before it at any time during the continuance in force of the passport so issued."

11. The aforesaid notification came to be further clarified through a circular issued by the Ministry of External Affairs, dated 21.08.2014, insofar it relates to the issuance of passports to an applicant against whom proceedings are pending before a Criminal Court. As per the said circular, the passport authorities were directed to process the applications for issuance of passport after obtaining an undertaking together with a letter directing them to fulfil the requirements prescribed in the gazette notification dated 25.08.1993.

12. In the light of the notification dated 25.08.1993 and the subsequent circular dated 21.08.2014 read with Section 10(3) (e) of the Indian Passports Act, 1967, it can only be concluded that the scope for denying permission to issue a passport or initiate steps to impound is narrowed down to the effect that such persons may be permitted to leave the country on fulfilment of certain requirements. On a cogent reading of the gazette notification along with Section 10(3)(e) of the Indian Passports Act, 1967, it can only be held that the provisions of the Indian Passports Act will not be an absolute embargo for a person to leave the country or otherwise be disentitled for issuance of passport.

13. Yet another aspect that could be relevant in the circumstances of the present case, is the status of a person being accused or charged for criminal offences. One of the cardinal principles of criminal jurisprudence is the principle of presumption of innocence. The general principle is that a person accused of a criminal offence is



presumed to be innocent until he is proved to be guilty has been reiterated in various judgments of the Apex court as well as the High Courts. The right of a person to move in and out of the country is a personal liberty protected under Article 21 of the Constitution of India. The requirement of natural justice is implicit in Article 21. While a person's personal liberty is protected under the Constitution of India, when such a person is yet to be proved guilty of a criminal offence, the passport authorities deriving their powers under Section 10(3)(e) of the Indian Passports Act, 1967, which is only directory in nature may not be justified in arbitrarily invoking the provision for impounding or attempting to impound or revoking the passport on the ground that the criminal case is pending.

14. In the light of the above observations, it can only be concluded that the respondent's action in creating an embargo to the personal liberty of the petitioner to move in and out of the country, is arbitrary.

3. In view of the said proposition laid down by this Court, the first respondent herein is directed to issue passport to the petitioner, within two weeks from the date of receipt of this order.

4. With the above observation, the writ petition stands allowed. No costs.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-III)

To

The Inspector of Police,
Sattur Town Police Station,
Virudhunagar District.

+1cc to M/s.G.M.Law Office, Sr.No.76122
+1cc to Mr.C.Nandagopal, Advocate Sr.No.76762
+1cc to Spl.Government Pleader Sr.No.76252

GNS

VB/MMS/SAR3/11.08.2018/4P/5C

W.P. (MD) No.12016 of 2018
31.07.2018